

U.S. Department of Justice



United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

May 3, 2019

BY ECF

Honorable Paul A. Engelmayer
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Open Society Justice Initiative v. Central Intelligence Agency, et al.*,
No. 19 Civ. 234 (PAE) (BCM)
Open Society Justice Initiative v. Department of Justice, et al.,
No. 19 Civ. 1329 (PAE) (BCM)

Dear Judge Engelmayer:

We write pursuant to the Court's scheduling order, ECF No. 30, to provide a further status update. As further detailed below, the State Department respectfully requests the opportunity to submit additional information and a short letter brief regarding the processing rate for potentially responsive records.

State Department searches. State has continued to engage in discussions with plaintiff, through counsel, to attempt to narrow plaintiff's request. The approximately 700 records previously identified in the Everest and State Archiving System ("SAS") databases are being reviewed for a total page count; the SAS records consist of approximately 2,868 potentially responsive pages, and State is continuing to work on the page count for the Everest database. State has proposed processing those records at a rate of 300 pages per month for responsiveness and exemptions. The proposed review rate is based on State's resources, the additional time necessary to review records that may contain classified information, and the potential need for consultation with other agencies. As a counter, Plaintiff proposes that State process all 700 records from the Everest and SAS databases within one month. The parties are unable to reach an agreement on a processing rate at this time. We believe that the dispute can be resolved expeditiously by letter briefing, however, and respectfully propose the following schedule:

- By Monday, May 13, the government will file a letter brief not to exceed three single-spaced pages, as well as a declaration from State explaining the factual basis for its 300-page proposal, including State's FOIA resources, overall FOIA burden, and recent efforts State has undertaken to respond to increasing FOIA demands.
- By Monday, May 20, plaintiff will file a responsive letter brief not to exceed three single-spaced pages.

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State will proceed with processing at the rate of 300 pages per month in the interim.

In addition to the Everest and SAS records, the parties have engaged in discussions about an additional search to capture email records. After further discussion, plaintiff has now requested that State identify up to five custodians for each of the 13 previously identified State offices or components most likely to possess substantive responsive records. State is in the process of identifying the relevant custodians for each of the 13 offices or components and will begin running searches to determine the number of records for the identified custodians. State anticipates completing this by Thursday, May 9.¹

NSA. NSA's search is complete. The search yielded approximately 100 records. Of these, two were located on an unclassified computer system; the remainder were located on a secure system and may contain classified information. NSA is beginning the process of de-duping the records and assessing how long processing will take. Because of the volume of potentially classified information, NSA preliminarily estimates that all processing will take three months to complete; however, it plans by May 15, 2019 to provide Plaintiff with a firm deadline for completing processing. NSA needs two weeks to undertake its initial assessment of the records in part because the responsible NSA attorney is out of the office for most of next week, and no other FOIA attorney at NSA is available for this task. Plaintiff has expressed its view that three months for processing is not a sufficient pace, but the parties agree that the issue is not ripe for the Court given that the initial assessment is still underway.

CIA. The CIA's search is ongoing. The parties have conferred and agreed to exclude from CIA's search (1) subscription emails from media outlets; and (2) agency personnel sending the text of or links to news articles without any commentary.

Other agencies. CIA and ODNI's searches are ongoing and should conclude by May 10, 2019. DOD and DOJ's searches are ongoing and should conclude by May 29, 2019. FBI's search was previously completed.

¹ Separate, related searches are necessary to identify any records sent on a classified system.

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We thank the Court for its attention to this matter.

Respectfully submitted,

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